

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-003-13-1-5-00165-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-377-024.000-003
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. James Nowacki contested the 2013 assessment for his property at 2762 Wright Street in Gary. The Lake County Property Tax Assessment Board of Appeals issued its determination valuing the vacant residential lot at \$3,600.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On October 29, 2018, Ellen Yuhan, our designated administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his hearing officer, Robert W. Metz. Both were sworn in and testified.

Record

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit 1: Aerial Map
Petitioner Exhibit 2: 2014-2018 Property Record Card
Petitioner Exhibit 3: 2009-2013 Property Record Card
 - b. The record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

Burden of Proof

5. Generally, a taxpayer seeking review of an assessing official’s determination has the

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burden of proof. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b), (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year’s level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).

6. Because there was no change in the subject property’s assessment from 2012 to 2013, Nowacki bears the burden of proof.

Summary of Contentions

7. Nowacki’s case:
 - a. Nowacki contends the assessment should be \$2,400. The county had the property for 28 years. It was over-assessed to the point there was no market for it. In 2009, Nowacki bought the property at an auction attended by hundreds of potential bidders. He paid \$132, which was essentially the minimum bid. The sale price shows that the property was assessed for significantly more than it was worth. *Nowacki testimony.*
 - b. In 2016, the Assessor decreased the assessment to \$3,100, which Nowacki contends is progress but still inaccurate. If we do not change the 2013 assessment to \$2,400, Nowacki asks us to lower it to \$3,100 and carry that value forward. *Nowacki testimony and argument; Pet’r Exs. 1-3.*
 - c. To support his claims, Nowacki offered an aerial map and property record cards. According to Nowacki, the map shows that the community looks like a junk yard, and the property record cards show a static lifecycle. *Nowacki testimony; Pet’r Exs. 1-3.*
8. Assessor’s case:
 - a. The Assessor contends that Nowacki offered no substantial evidence to support changing the assessment. *Metz argument.*

Analysis

9. Nowacki failed to make a prima facie case for reducing his assessment. We reach this conclusion for the following reasons:
 - a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance

- (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013, the valuation date was March 1, 2013. I.C. § 6-1.1-2-1.5(a).
- c. Nowacki contends the subject property’s 2013 assessment should be \$2,400, but he failed to present any probative market-based evidence to support that value, or any other value for that matter. Conclusory statements are insufficient. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Alternatively, Nowacki asks us to reduce the assessment to its 2016 level of \$3,100 and apply that value going forward. We cannot do that. It is a well-settled concept in Indiana that each assessment year stands alone. *See Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (*citing Glass Wholesalers, Inc. v. State Bd. of Tax Comm’rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) (“[F]inally, the court reminds Fleet Supply that each assessment and each tax year stands alone.... Thus, evidence as to the Main Building’s assessment in 1992 is not probative as to its assessed value three years later.”). So too does each appeal process. *Fisher v. Carroll Cnty. Ass’r*, 74 N.E.3d 582, 588 (Ind. Tax Ct. 2017). Simply pointing to the property’s assessment in 2016 does nothing to show its value for 2013 or for any of the intervening years. Indeed, none of those intervening years is even on appeal.
- e. Because Nowacki offered no probative market-based evidence to demonstrate the subject property’s correct market value-in-use, he failed to make a prima facie case for a lowering his assessment. Where a petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Final Determination

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 assessment.

ISSUED: March 21, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.